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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: FEB 18 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found by a consular officer to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (WAC-99-224-51119). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and child.

The officer in charge (OIC) found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See District Director Decision, Attachment I-292*, dated November 2, 2001.

On appeal, counsel asserts that extreme hardship is present in the application and provides supplemental documentation to support his assertion.

The record contains two declarations of the applicant's husband, dated June 11, 2002 and November 27, 2001, respectively; a copy of a sonogram report reflecting the applicant's miscarriage of a pregnancy; a letter from a physician in India treating the applicant, dated May 25, 2002; a letter from a physician in India verifying treatment for the applicant's third miscarriage, dated May 21, 2002; a copy of the hospital discharge card relating to the applicant's third miscarriage; a copy of the hospital bill for treatment of the third miscarriage; a forensic psychological evaluation of the applicant's husband; evidence of illness experienced by the couple's child; evidence of two prior miscarriages by the applicant; copies of prescriptions for the applicant's husband; copies of statements from business associates of the applicant's husband; a copy of the deed for the couple's home and letters of support. The entire record was reviewed and considered in rendering a decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an

> immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States without inspection in February 1997. The applicant remained in the United States without lawful status until July 25, 2000. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until July 25, 2000, the date of her departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress specifically did not include hardship to an applicant's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant's U.S. citizen child will therefore only be considered in this decision to the extent that it impacts the qualifying relative, the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The BIA noted in *Cervantes-Gonzalez*, that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.*

In the present case, it appears that the applicant's husband was aware of the applicant's immigration status at the time of their marriage in 1995. The applicant's husband states that he knew that he would need to apply for legal status for his wife after he became a naturalized citizen of the United States. "I was waiting for my citizenship interview, and I was sure that I would be a citizen by 1996, so that I could bring my wife to the United States to live with me." *See* Declaration of Praveen Kumar Gupta, dated November 27, 2001. Instead, the applicant entered the United States illegally in February 1997 prior to the naturalization of the applicant's husband.

Counsel offers the declarations of the applicant's husband and a psychological evaluation as evidence of the extreme hardship to be suffered in the event that the applicant's waiver is denied. *See* Supplemental Declaration of Praveen Gupta, dated June 11, 2002 and Forensic Psychological Evaluation c[redacted] dated November 26, 2001. While the allegations made by the applicant's husband regarding mistreatment at the hands of his sister and brother-in-law are unfortunate, they are unsubstantiated in the record beyond the statements of the applicant's husband. Further, the record establishes that the applicant's husband has successfully severed ties with his sister and brother-in-law.

The applicant's husband and the evaluating psychologist state that the applicant's husband takes medication, including prescription drugs, to treat his depression and anxiety, however there is no evidence in the record of an ongoing relationship between the applicant's husband and a treating psychiatrist. The psychologist preparing the evaluation indicates that the applicant's husband is taking a medication prescribed exclusively to individuals who suffer from psychotic conditions. *See* Forensic Psychological Evaluation of M[redacted] [redacted]at 11. However, the record contains no medical reports documenting this condition or establishing a relationship with a psychiatrist. The record does not demonstrate how the presence of the applicant serves to alleviate these conditions and it does not establish that she is uniquely situated to care for her husband.

Counsel contends that the applicant's child is suffering as a result of relocation to India. The AAO notes that the applicant's child is not a qualifying relative for purposes of proceedings under section 212(a)(9)(B)(v) of the Act. The record does not establish that the applicant's U.S. citizen child cannot reside in the United States with his father thereby alleviating the ailments from which he suffers in India. *See* Prescriptions fo[redacted] [redacted] The record does not establish that the applicant is the only person who can provide care to the couple's child. The AAO notes that the applicant's husband and son, as U.S. citizens, are not required to depart from the United States as a result of a denial of the applicant's waiver.

Counsel provides evidence of three miscarriages suffered by the applicant and contends that treatment for her condition is not available in India. While the AAO sympathizes with the applicant's plight, hardship suffered by the applicant herself is not relevant to waiver proceedings under section 212(a)(9)(B)(v) of the Act. The applicant's husband also suffers emotionally as a result of miscarriages experienced by the applicant, however the record does not tie the applicant's complications in carrying a pregnancy to term to her claim of extreme hardship caused by inadmissibility to the United States.

Counsel asserts that the applicant's husband is suffering financial hardship as a result of the applicant's inadmissibility. Counsel provides statements from creditors as evidence of the hardship. However, the record does not establish the solvency of the business belonging to the applicant's husband prior to the applicant's departure from the United States. Therefore, the record does not provide a perspective from which to draw a comparison and determine extreme financial hardship imposed by the applicant's inadmissibility. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA) 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme

hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from his wife. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.